

September 9, 2016

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Commercial Availability of Navigation Devices, MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

On September 7, 2016, Ernesto Falcon with the Electronic Frontier Foundation (EFF), Colin Sullivan with Patreon, and Laura Chernikoff with the Internet Creators Guild (ICG) spoke by telephone call with David Grossman, Chief of Staff to Commissioner Clyburn.

Patreon is a crowd-funding platform that assists independent content creators to obtain funding from their fans. Nearly 200,000 creators receive funding from fans through Patreon's services with many making their living exclusively through producing content on open platforms. The ICG represents professional creators of online video content and provides them a voice on policy matters that impact their membership.

Both Patreon and the ICG work closely with thousands of independent content creators that rely on open platforms on the Internet to be discovered, build a following, and monetize their content. They informed the FCC staff that proposals circulated by the cable industry¹ with the endorsement of large content companies would have a detrimental impact on small content creators. In particular, any attempts by the FCC to restrict search functionality or restrictions on 3rd party manufacturers in developing their own user interface will negatively impact independent creators in favor of large established interests.

Parties Strongly Oppose Rules Proposed by Disney, CBS, Time Warner, Viacom, and Scripps Networks

Major content industries recently submitted to the FCC explicit language on how they wish the final Report and Order to appear.² Internet Creators Guild, Patreon, and EFF informed Mr. Grossman that our memberships strongly oppose such an approach. Ernesto

¹ See NCTA & AT&T Response to questions about open standards HTML5 Apps-based approach, MB Docket No. 16-42, CS Docket No. 97-80 (July 21, 2016).

² See 21st Century Fox Notice of Ex Parte with Chairman Wheeler staff, MB Docket No. 16-42, CS Docket No. 97-80 September 6, 2016).

with EFF explained that this document reveals the core goals of the industry when the FCC embarked on the original NPRM to open up the set-top boxes. That goal being to control the future of the viewing experience by having the FCC give them new rights through regulation since they have long been denied these powers under copyright law. The proposal in fact asks that the FCC not only hand them the power to decide the future of 3rd party set-top box devices but that the FCC further exert no oversight over their new FCC created licensing regime.

A “Licensed Search Only” Will Harm Small Content Creators

The cable proposal states that the FCC should restrict the ability of set-top boxes to search for content from only “licensed content.” EFF explained that such a restriction in practice would be under inclusive of available lawful content to the harm of independent content creators. ICG and Patreon further informed FCC staff that any restriction on search would harm their clients’ and members’ ability to make their living through open platforms and rely on consumers’ ability to discover their content. Discoverability is in fact essential to their ability to cultivate niche audiences in order to generate revenue to create and monetize high production projects. Both Patreon and ICG expressed concerns that the FCC could in fact create a divide between small content creators and large established entities that favors content carried by cable companies.

FCC Should Avoid Regulating User Interfaces

ICG and Patreon strongly urged the FCC to refrain from regulating the user interface of set-top boxes in order to preserve their capacity to respond to market changes. A primary method of independent content creators to monetize their content is to have multiple ways to engage with their audiences either through engaging in direct commentary with their audiences, cross promotional activities with other applications, and advertising merchandise through their content. In order for these methods of engagement to be viable in 3rd party set-top boxes, parties believed that manufacturers must be free to update and modify their user interfaces to respond to consumer behavior.

Please direct any questions to the undersigned.

Sincerely,

/s/ Ernesto Falcon
Legislative Counsel
Electronic Frontier Foundation